

When Must A Child Attend School?

Compulsory School Age and Pennsylvania's Truancy Laws

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All children living in Pennsylvania have a legal obligation to attend school every day if they are of "compulsory school age."

COMPULSORY SCHOOL AGE

The compulsory school age in Pennsylvania was recently changed. These changes will go into effect beginning in 2020-2021 school year and will require all students to attend school no later than age 6 and until age 18 or graduation, whichever occurs sooner. These requirements will apply across Pennsylvania.

For school year 2019-2020, Pennsylvania's compulsory school attendance laws require that students enter school no later than age 8. However, children living in Philadelphia are required to enter school no later than age 6. Currently, all students, regardless of where they live in Pennsylvania, must attend school until they turn 17 or graduate, whichever comes first.

WHAT IS TRUANCY?

Truancy occurs when a student of compulsory school age accrues a certain number of absences, regardless of whether they occur separately or happen all at one time.

The law defines a child who is "truant" as having **three** or more school days of *unexcused* absence during the *current* school year. A student becomes "habitually truant" when she has had **six** or more school days of unexcused absences during the current school year.

WHAT DO PENNSYLVANIA TRUANCY LAWS SAY?

If a student does not attend school, she can be subject to Pennsylvania's truancy laws, Act 138 and Act 39.¹ These laws outline what happens if a student does not attend school. These laws describe the responsibilities of public schools – such as neighborhood schools, charter schools, cyber-charter schools, and "non-public" schools in ensuring attendance and enforcing compulsory school attendance.

Act 138 went into effect beginning in the 2017-2018 school year. Below is an overview of the key provisions of Act 138; a more detailed analysis can be found in another fact sheet, [Truancy and School Attendance in Pennsylvania](#).

The purpose of Act 138 is to improve school attendance and reduce truancy "through a comprehensive approach to consistently identify and address attendance issues as early as possible" using evidence-based interventions and practices to:

¹ See 24 P.S. §§ 13-1326 -13-1354, Act 138 of 2016 (Act 138), available at <https://www.legis.state.pa.us/cfdocs/legis/li/uconsCheck.cfm?yr=2016&sessInd=0&act=138> and Act 139 of 2018, available at https://www.legis.state.pa.us/cfdocs/legis/li/uconsCheck.cfm?yr=2018&sessInd=0&act=39&mobile_choice=suppress

- Preserve the unity of the family whenever possible as underlying issues of truancy are addressed.
- Avoid possible entry of children into foster care, the loss of housing, and other unintended consequences of disruption of an intact family unit.
- Confine a parent or guardian for truancy-related offenses only as a last resort and for a minimum amount of time.

Act 39 went into effect during the 2018-2019 school year. This law clarified that charter schools, cyber charters, and regional charter schools are solely responsible for enforcing compulsory school attendance at their schools.

Additionally, Act 39 addresses the numerous obligations of “non-public” schools in enforcing compulsory school attendance – both on their own and in conjunction with the local school district where the child who attends a “non-public” school resides.

WHO MUST MAKE SURE A CHILD ATTENDS SCHOOL?

The person(s) who are caring for the child – usually the child’s parent(s), but sometimes a guardian, relative, or foster parent – are legally responsible for making sure that the child attends school. Students are obligated to attend school and can also be held accountable under the law. Truancy laws require school districts to take certain steps, including convening “school attendance improvement conferences” and creating a school attendance improvement plan to identify the underlying causes of truancy and ensure that students attend school and avoid truancy.

WHAT IS A VALID EXCUSE FOR AN ABSENCE FROM SCHOOL?

Each school district has rules and policies about student attendance and absences, which they are required to share with all families. Check your school district’s student handbook or website for this information. Pennsylvania law broadly defines absences as excused when a student is prevented from attendance for mental or physical illness, or other urgent reasons, including to attend a court hearing. Many school districts will also excuse absences for family emergency, death of a family member, school activities, and educational travel with prior approval.

Schools must excuse all absences for children in foster care related to their court case, including family visitations. If a student is dismissed during school hours for health-related reasons by a school nurse or other school designee, the student’s absence must be excused. An out-of-school suspension may *not* be considered an unexcused absence.

Each district or charter school has its own rules and timelines regarding documents you must provide to support your child’s excused absence, such as a doctor’s note. In all cases, even if your child is absent for only one day, you should always provide your child’s teacher or principal with a note explaining the absence. Send the note right way and keep a copy for your records. If your child’s absence was due to illness, send a doctor’s note to show that the absence was excused. If a school requires a doctor’s note within three (3) days, the school can legally refuse to change the unexcused absences to an excused absence because the note was late. However, most schools will work with families to ensure that such absences are validly excused. The key to addressing these issues is collaboration.

OBLIGATIONS OF CHARTER SCHOOLS

Every charter school, including cyber charters, must establish an attendance policy. A charter’s attendance policy *may differ* from the policy of the school district in which the child resides. Parents must be notified of their child’s charter school attendance policy. All charter school attendance policies must comply with Act 138 and Act 39.

Additionally, charters and cyber charters must report unexcused absences directly to PDE. Charters are solely responsible for enforcing compulsory school attendance laws for their students and for filing citations with magistrate district courts or referring truancy matters to the local children and youth

services (CYS) agency, as required by Act 138. Charter schools are also responsible for holding attendance improvement conferences and developing attendance improvement plans.

PROHIBITION ON EXPULSION, DISCIPLINARY TRANSFER OR REASSIGNMENT, AND OUT-OF-SCHOOL SUSPENSION

Public schools cannot impose *discipline* for truant behavior that excludes the student from the classroom or places the child in an alternative education for disruptive youth (AEDY) program. Recognizing that pushing students who are truant further away from school is ineffective, Act 138 states that schools shall not expel or impose out-of-school suspension, disciplinary reassignment, or transfer for truant behavior. This provision applies to charter and cyber charter schools, regional charters, neighborhood schools, and area vocational and technical schools. Unfortunately, Act 39 does permit “non-public schools” from imposing exclusionary discipline, including expulsion, as a response to truancy, despite its ineffectiveness and punitive impact on students.

PROCEDURES WHEN A CHILD IS TRUANT

The law requires schools to notify in writing the person in parental relation with a child within ten (10) school days of the child’s third unexcused absence that the child has been “truant.” This notice:

- **MUST** include a description of the consequences that will follow if the child becomes habitually truant in the future.
- **MUST** be in the mode and language of communication preferred by the person in parental relation; and
- ***MAY*** include the offer of an attendance improvement conference.

If the child continues to be truant and incurs additional absences after this notice has been issued, the school must offer the student and parent a *school attendance improvement conference*.

The law defines a student attendance improvement conference as a “conference where the child’s absences and reasons for the absences are examined in an effort to improve attendance, with or without additional services.”

Schools MUST convene an attendance conference to create *individualized plans, called school attendance improvement plans (SAIPs)*, to address and reduce a student’s truancy prior to referring the matter to court. Schools must invite the following people to the conference:

- The child
- The person in parental relation to the child
- Other individuals identified by the person in parental relation who may be a resource (e.g. a grandparent, aunt, sibling, family friend, advocate, community member, etc.)
- Appropriate school personnel
- Recommended services providers (e.g. case managers, behavioral health providers, probation officers, children and youth practitioners, etc.).

The school must hold the conference even if the parent declines to participate or fails to attend after the school provides advance written notice and makes at least two attempts to communicate via telephone. There is no legal requirement for either the child or parent to attend an attendance improvement conference, but it is important for parents to be a part of this process. The school must document the outcome of any attendance improvement conference in a written attendance improvement plan.

Schools may not take any further legal actions to address unexcused absences, including referring a student to magisterial district court, until *after* the date of the scheduled attendance improvement conference has passed.

PROCEDURES WHEN A CHILD IS HABITUALLY TRUANT

Habitually truant children under 15 years of age. A school must refer the child to either: (1) a school-based or community-based attendance improvement program or (2) the county CYS for services or possible disposition as a dependent child under the Juvenile Act. Additionally, the school may file a citation against the parents of a habitually truant child under age 15 in magistrate court.

Habitually truant children 15 years of age and older. A school must refer the child to either: (1) a school-based or community-based attendance improvement program or (2) file a citation action against the student or parent in a magisterial district court. If a student aged 15 or older incurs additional absences after a school refers that child to an attendance improvement program or the child refuses to participate in an attendance improvement program, the school then may refer the child to the county CYS agency for possible disposition as a dependent child.

The law defines “school-based or community-based attendance improvement program” as a “program designed to improve school attendance by seeking to identify and address the underlying reasons for a child’s absence.” While such a program may include an educational assignment to an alternative education program, it explicitly does not include referral to an Alternative Education for Disruptive Youth (AEDY) program under Article XIX.

In all cases, regardless of age, where a school refers a student who has become a habitually truant child to magisterial district court or CYS, the school must provide verification that it convened and held a student attendance improvement conference.

WHAT IS THE PENALTY SCHEME?

Fines up to \$750. A person convicted of habitual truancy may be fined: (1) up to \$300 per offense, with court costs, for the first offense; (2) up to \$500 per offense, with court costs, for the second offense; and (3) \$750 per offense, with court costs, for a third and any and all subsequent offenses. “Offense” is defined as “each citation filed under Section 1333.1 for a violation of the requirement for compulsory school attendance... regardless of the number of unexcused absences averred in the citation.” For example, if fifteen absences were contained in a first-time offense, the person could only be fined up to \$300.

Jail up to three (3) days. A court may jail a parent who fails to pay a fine or complete court-ordered community service for a period not to exceed three days in any one case. However, a judge may jail a parent only if (1) the court makes specific findings that the parent had the ability to pay the fine or complete the community-service, and (2) the court finds that parent’s non-compliance was willful.

Judges also have discretion regarding whether to send the Department of Transportation (DOT) a certified record of a student’s conviction for license suspension. While the law requires DOT to suspend a child’s license if referred, the discretion the law affords to magistrates should limit the number of students whose licenses are suspended for truancy.

The Education Law Center-PA (ELC) is a nonprofit, legal advocacy organization with offices in Philadelphia and Pittsburgh, dedicated to ensuring that all children in Pennsylvania have access to a quality public education. Through legal representation, impact litigation, trainings, and policy advocacy, ELC advances the rights of underserved children, including children living in poverty, children of color, children in the foster care and juvenile justice systems, children with disabilities, English learners, LGBTQ students, and children experiencing homelessness.

ELC’s publications provide a general statement of the law. However, each situation is different. If questions remain about how the law applies to a particular situation, contact ELC’s Helpline for information and advice – visit www.elc-pa.org/contact or call 215-238-6970 (Philadelphia) or 412-258-2120 (Pittsburgh) – or contact another attorney of your choice.